



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CINCINNATI ACQUISITIONS DIVISION
CINCINNATI, OHIO 45268

DATE: July 28th, 2020
SUBJECT: Contract #68HERH19D0033_TO 68HERH19F0406, Modification P00004
FROM: Erin M. Ridder, Contracting Officer
TO: Kelly Loomis

Attached is request for task order modification for Task Order #68HERH19F0406, Modification P00004, which was awarded for the project entitled, "Diamond Alkali-Lower Passaic River Allocation."

The government requests you prepare a revised cost proposal for the task order modification in accordance with the changes outlined in the attached Performance Work Statement. The proposal must be submitted to ridder.erin@epa.gov by **August 10th, 2020**. The modification adds the number of documents the allocation team must review and incorporate into the allocation; adds level of effort; improves the managerial oversight of the project schedule; and to extend the period of performance.

The following documents provided for this modification will become part of the Task Order Award:

- Performance Work Statement

Any questions should be directed to the undersigned within two business days of receipt.

A handwritten signature in black ink, appearing to read "Erin M. Ridder", is positioned above the printed name.

Erin M. Ridder
Contracting Officer

Cc:
Alice Yeh, Task Order Contracting Officer Representative
Terry Fenton, CL-COR
Terry Simpson, Alt CL-COR

PERFORMANCE WORK STATEMENT

Contract 68HERH19D0033

TO # 68HERH19F0406

Modification: P00004

TITLE: Diamond Alkali-Lower Passaic River Allocation

MODIFICATION P00004: This performance work statement (PWS) modification is to add to the number of documents that the allocation team must review and incorporate into the allocation (see Section II.B.4), **Exemption (b)(3)(A) & (7)(A)**

to improve the managerial oversight of the project schedule (see Section II.B.6), and to extend the period of performance (POP) [see Sections I and V].

ABSTRACT: This task order will provide neutral, unbiased support for development of an allocation for potentially responsible parties (PRPs) at the Diamond Alkali Superfund Site in New Jersey. This allocation will form the basis for final negotiations between the EPA Region 2 and PRPs. This Task Order is funded by EPA Region 2 Superfund program. This Task Order continues the allocation work started under Contract EP-W-14-020, Task Order 96 (referred to below as the previous contract).

I. BACKGROUND

The Diamond Alkali Site has a long history, involving over 100 potentially responsible parties (PRPs). Since the late 1800s, the Lower Passaic River has been a highly industrialized waterway, receiving direct and indirect discharges from numerous industrial facilities. Data collected in the Lower Passaic River, and EPA's analyses, show that contaminated sediment in the lower 8.3 miles are a major source of contamination to the rest of the river and Newark Bay and pose an unacceptable risk to human health and the environment due to the presence of a variety of contaminants that stay in the environment for a long time and can build up in fish and shellfish. These contaminants include dioxins and furans, PCBs, mercury, DDT and its primary breakdown products, copper, dieldrin, PAHs, and lead.

On March 4, 2016, EPA issued a record of decision selecting the remedy for the lower 8.3 miles of the Lower Passaic River, which is Operable Unit 2 (OU2) of the Site. Currently, the remedial design (RD) for OU2 is being performed by Occidental Chemical Corporation (OCC) pursuant to an administrative order on consent. The cost of the remedial action (RA), estimated for purposes of remedy selection, is \$1.38 billion.

Region 2 has issued a notice of potential liability to approximately 100 parties, informing them of their responsibility for the RD/RA for OU2. The Region has offered a first round of cash-out settlements to a group of approximately 20 PRPs. The Region also expects to separately address the liability of municipalities and public entities. The Region requires the services of a third-party allocator to assign a share of responsibility to the 83 PRPs that are not in the first round of cash-out settlements and that are not municipalities or public entities. Some of the PRPs have

multiple facilities in the allocation, so that the total number of facilities to be assigned a share of responsibility will be 97. The Region expects to use the results of the allocation to: 1) enter into settlement agreements with a small group of the PRPs with the largest shares of responsibility to perform the remedial action; and 2) enter into another round of cash-out settlements with the other PRPs with smaller shares of responsibility.

Region 2 understands that a PRP group (the Cooperating Parties Group, or CPG) has made at least two previous attempts to develop a mutually acceptable allocation of liability to promote settlement with EPA for costs and work at the site, however both efforts fell short of agreement. Region 2 believes that because of these previous efforts, additional information available from responses to CERCLA 104(e) letters, information available from previous litigation at the state level and numerous conversations with PRPs over the years, the allocation project will be able to build upon existing information and contacts. Some augmentation of background, data and allocation factors may need to occur to develop what is hoped to be an acceptable settlement proposal and structure. In 2016 the Department of Justice retained a mediator, David Batson of Techlaw to assist in settlement analysis. Those discussions and analyses have resulted in this effort.

This work needs to start in August 2019 because of milestones anticipated in site cleanup and is expected to last up to 13 months. **This PWS amendment extends the expected period of performance from October 30, 2020 to March 31, 2021.**

II. SCOPE OF WORK – TASKS

A. Preliminary Work

1. The contractor shall select a team of dispute resolution professionals and support staff in consultation with the Contract Level Contracting Officer's Representative (CL COR) and Task Order Contracting Officer Representative (TOCOR). The lead service provider shall have the following qualifications:
 - Detailed knowledge of a range of Superfund allocation of liability processes.
 - Multiple instances and experience constructing allocation plans consistent with EPA settlement guidelines and legal requirements.
 - Access to staff resources for database design, entry, analysis and manipulation.
 - Understanding of PRP legal and technical issues and concerns in designing allocation processes.
2. The contractor shall be responsible for oversight of deliverables on this Task Order and shall be responsible for transmission of reports and invoices as required by the contract.

B. Allocation Design and Production Performance Requirement:

The purpose of this project is to provide neutral, unbiased allocation development and negotiation support to establish a reasonable basis for EPA settlement offers to Diamond Alkali OU2 PRPs by developing and implementing an allocation process for the parties that are not in the first round of cash-out settlements and that are not municipalities or public entities. Major deliverables include (1) a searchable database containing documents and data used for the allocation and (2) a written allocation analysis report

(i.e., allocation report). Authority to initiate work for each subtask described below will be provided via email by the TOCOR as a need to conduct subtasks is identified.

During the performance of the work described in the subtasks, Region 2 may share information with the contractor that is pre-decisional and deliberative or is considered to be attorney work product in preparation of potential litigation. Such work is privileged to the United States and EPA under the Freedom of Information Act. While the contractor shall conduct the allocation process in a manner transparent to the public to the extent possible, the contractor must consult with EPA before releasing information to the public to ensure confidential information is protected. The contractor shall perform the following negotiation support subtasks:

1. Initial review of information provided by EPA: EPA will provide the contractor with the information, materials and reports generated under the previous contract pertaining to the allocation. The contractor shall review this information.
2. PRP Outreach: The contractor shall conduct outreach to OU2 PRPs participating in the allocation to provide them with the opportunity to comment on and correct the draft data reports produced under the previous contract and to provide input on the drafting of the allocation recommendation report.
 - a) The PRP outreach performed by the contractor shall include (1) ensuring that each PRP's data or information used in the allocation is correctly input into the database, (2) soliciting PRP positions on the drafting of the allocation recommendation report, and (3) communicating how their input was or was not taken into consideration in developing the allocation recommendation report.
 - b) The contractor shall complete a report regarding outreach efforts conducted with the OU2 PRPs, including a list of participants in outreach efforts, description of topics discussed, and summary of issues or concerns raised.
3. Searchable database: The contractor shall finish developing the searchable database started under the previous contract. The searchable database should contain and organize all of the information and data used in the allocation.
 - a) Under the previous contract, the database was designed and initially populated with information received from EPA, including PRP disclosure statements and nexus documents from third party litigation totaling approximately 130,000 pages.
 - b) Under the previous contract, the database was also populated with up to **413,895** pages of documents received from PRPs deemed relevant to the allocation by the previous contractor and any other information used in the allocation.
 - c) The database shall be designed in such a way as to allow access and use by EPA and DOJ staff for their settlement purposes.
 - d) Completion of database: The contractor shall complete the database and provide the completed database to EPA when the final allocation recommendation report, described in paragraph 5, is complete.
4. Final Facility Data Reports:
 - a) Draft Facility Data Reports: After reviewing and analyzing relevant information in the database (described in paragraph 3 above) on each PRP facility, the previous

contractor developed individual data reports for each facility. The data reports provided the information that will be used to conduct the allocation.

- b) PRP Review of Draft Data Reports: After completing the draft data reports, the previous contractor sent the draft reports to the PRPs participating in the allocation for their review and comment on the accuracy of the information. Note: EPA did not have an opportunity to review the draft data reports.
- c) Final Facility Data Reports: The contractor shall solicit comments from the PRPs participating in the allocation on the accuracy of the information in the draft data reports. The contractor shall finalize the data reports based on the comments received.
- d) Additional documents received: As of June 2020, the contractor had received an additional 48,600 pages of facility data from the PRPs participating in the allocation. The contractor shall review the additional information and incorporate it into the searchable database and allocation recommendation report, as necessary and appropriate.

5. Allocation and Report

- a) Allocation: The contractor shall ensure that each PRP's data or information used in the allocation is correctly input into the database. **Exemption (b)(3)(A) & (7)(A)**

The contractor shall solicit from the PRPs participating in the allocation positions on the drafting of the allocation recommendation report (as described in paragraph 2). **As of June 2020, the contractor had received an additional 276,851 pages of position briefs, expert reports and supporting information from the PRPs participating in the allocation. From June 2020 through the end of the allocation, the contractor expects to receive up to another 50,000 pages of response briefs, expert reports and supporting information. The contractor shall review the expected total of up to 326,851 pages of additional information and incorporate it into the searchable database and allocation recommendation report, as necessary and appropriate.**

- b) The contractor shall perform the allocation.
- c) Draft allocation recommendation report: The contractor shall provide a draft allocation recommendation report for review and comment by the PRPs participating in the allocation. **The contractor shall enforce the page limits and other requirements specified in the Allocation Guide for comments on the draft allocation recommendation report.** EPA will not have an opportunity to review the draft allocation recommendation report.
- d) Final allocation recommendation report: After considering the PRPs' input, the contractor shall provide a final allocation recommendation report to EPA and the PRPs in the allocation.

6. Meetings or Conference Calls: The contractor shall attend and participate in the following meetings either in-person or by telephone or video conference at EPA's discretion.
 - a) Progress meetings or conference calls: Contractor shall hold weekly conference calls with EPA, and others as directed or determined by EPA, to discuss progress. **The contractor shall ensure that due dates for deliverables are met, and that any potential delays are reported to EPA as soon as possible and mitigated as much and as quickly as possible so that the final allocation recommendation report is not further delayed.**
 - b) Kickoff meeting or conference call with EPA: Contractor shall meet with EPA to discuss tasks described in this task order and EPA's expectations.
 - c) Draft allocation recommendation report meeting or conference call with PRPs: Contractor shall meet with the PRPs participating in the allocation to discuss their comments on the draft allocation recommendation report.
 - d) The contractor shall provide meeting facilities, equipment, supplies and support for meetings in cases where EPA or other participant facilities are unavailable or inappropriate.
7. The contractor shall furnish a final allocation recommendation report as described above and a short (2 page) Task Order Closeout Report. The Task Order Close Out Report shall not contain any confidential or sensitive information. The contents shall include:
 - a) A half page description of the case that describes the nature of the case, the parties, the process and the outcomes.
 - b) If appropriate, a short section reflecting on the process and procedural lessons learned and recommendation for improvements. The contractor shall identify those activities conducted that contributed to the success of the process.
 - c) Brief summary of the final costs of the project broken out by labor hours and other direct costs.The CL COR and TOCOR will review the draft Task Order Closeout Report and provide comments and revisions as necessary. The contractor shall prepare the final report incorporating their comments and revisions. The contractor shall provide one copy of the final report to the CL COR and one copy to the TOCOR. The final report may be transmitted in electronic form (Word format), rather than in hard copy if the TOCOR agrees
8. As directed by the TOCOR, the contractor shall participate in a post-process debriefing with EPA officials, including the CL COR, TOCOR and Technical Point of Contact (POC) and relevant EPA management, to discuss lessons learned and next steps.

C. Reports and Deliverables

All deliverables and tasks required under this task order must be submitted or completed within the time durations listed in the schedule set forth below. After notification to and agreement from the EPA team, TOCORs and CL CORs, the contractor may submit a revised proposed schedule for EPA approval. Upon EPA's approval, the revised schedule will supersede the schedule set forth below.

	Description of Deliverable, Transmittal or Activity	¶ Ref.	Type	Deadline
1	Kickoff meeting or conference call with EPA	II.B.6.b.	Activity	Within 20 business days of task order issuance
2	Completion of searchable database	II.B.3.c. & II.B.3.d.	Deliverable	Upon submission of the final allocation recommendation report (5.c.)
3	Completion of final facility data reports.	II.B.4.c	Transmittal	Within 40 business days of approval of TO award
4	Perform allocation	II.B.5.a.	Activity	170 business days after completion of final facility data reports (4.c.)
5	Draft allocation recommendation report	II.B.5.b.	Transmittal	170 business days after completion of final facility data reports (4.c.)
6	Draft allocation recommendation report meeting	II.B.6.c.	Transmittal	Within 20 business days of submittal of draft allocation recommendation report (5.b.)
7	Final allocation recommendation report	II.B.5.c.	Deliverable	65 business days after completion of draft allocation recommendation report (5.b.)
8	Final PRP outreach report	II.B.2.b.	Transmittal	10 days after completion of final allocation recommendation report (5.c.)
9	Draft case closure report	II.B.7	Transmittal	10 business days after acceptance of final allocation recommendation report
10	Final case closure report	II.B.7	Deliverable	10 business days after receipt of EPA comments.

1. Performance Standards:
 - a. The contractor shall provide negotiations support using the guidance listed in Attachment B, other applicable guidance, and/or direction provided in an individual task order.
 - b. The contractor shall send Region 2 TOCOR all reports in accordance with the contract.
 - c. The contractor shall provide a task order proposal plan within the schedule provided in the contract.
2. Deliverables shall be submitted to EPA by
 - a. Written paper text to Task level COR, when requested
 - b. Via e-mail to Task level COR
 - c. On electronic media (specify disk, CD, etc.) (only upon request and issued through written technical direction from EPA TOCOR)
 - d. Posted on a SharePoint server for access by Contract Level COR

III. WORK APPROACH

A. Alternative Dispute Resolution (ADR) Best Practices:

The Contractor shall approach this task in accordance with terms of the basic contract and according to the established norms and ethical standards of ADR professionals. Based on EPA's evaluation of a large number of ADR cases, the Agency has determined that the following practices are significantly related to positive substantive, relational, and procedural outcomes from ADR cases. The contractor shall ensure that this direction is provided to ADR professionals providing services under this task order:

- Prior to the mediation or facilitation and throughout the process, the ADR professional shall inquire about whether individual participants have the time, financial, and logistical resources necessary to participate effectively in the process and -- where resources are inadequate -- assist them in identifying appropriate resources or in making necessary adjustments to the process to accommodate resource constraints.
- The ADR professional shall assist the participants in identifying the issues that are important to resolving any controversy and solutions that will address the needs shared by the participants.
- The ADR professional shall conduct the process to promote active engagement from all participants.
- The ADR professional shall explore with the participants appropriate ways to incorporate high quality and relevant information resources necessary to resolve the issues.
- To support productive dialogue and effective implementation of any agreements reached by the participants, the ADR professional shall ensure that participants have appropriate authority to make commitments on behalf of their organizations.

B. Ethical Codes of Conduct:

The Contractor shall ensure that ADR professionals serving as neutral third parties under this contract receive information about and perform in accordance with ethical codes applicable to the practice of dispute resolution professionals. Relevant examples of ethical codes include those adopted by the American Arbitration Association, American Bar Association, Association for Conflict Resolution:

https://www.americanbar.org/groups/dispute_resolution/resources/Ethics/

C. Confidentiality:

All parties to this task order acknowledge that the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. Section 574 (ADR Act) shall govern the contractor's alternative dispute resolution activities (if any) under this task order, when activities pursuant to the task order fall within the jurisdiction of the ADR Act.

D. Contractor Representation:

In gathering information or performing tasks with parties outside the EPA, the contractor shall identify themselves as a contractor to EPA, not an EPA employee. The Contractor shall provide input or make recommendations based on the information gathered, however, decisions on all substantive issues will be made by EPA. **THE CONTRACTOR SHALL NOT INTERPRET EPA POLICY ON BEHALF OF EPA NOR MAKE DECISIONS ON ITEMS OF POLICY, REGULATION OR STATUTE. THE**

CONTRACTOR SHALL NOT TAKE A STAND ON THE MERITS OF SUBSTANTIVE ITEMS UNDER DISCUSSION.

E. Status Notifications:

THE CONTRACTOR SHALL NOTIFY THE EPA CL COR AND TOCOR WHEN 75% OF THE FUNDS PROVIDED HAVE BEEN EXPENDED OR WHEN FUNDING FOR LESS THAN 6 WEEKS WORK REMAINS. Notifications shall be in writing and cc to the CL COR.

F. Task Order Procedures, Constraints and Disclaimers

If out of town travel is required to accomplish the tasks under this task order, the contractor shall obtain advance approval for that trip and its costs in writing from the TOCOR and/or the CL COR. To the extent possible, the contractor's per diem costs shall be within allowable limits set by GSA.

This task order is not funded by multiple appropriations. This task order does not provide for training of contractor personnel, provision of Government Furnished Property or Accountable Personal Property, leased items or property or IT products or services. The PWS does not include any tasks that are inherently governmental in nature or provide personal services. The PWS does not anticipate transferring or developing Confidential Business Information or Personally Identifiable Information to the contractor. This project will not involve collection of environmental data and so is not subject to needing an EPA Quality Assurance Project Plan. Printing shall be in accordance with limitations of the contract. This project does not involve the service provider conducting surveys, data collection or questionnaires. Development of communications products as a result of activities on this task order will be in compliance with EPA's Policy and Implementation Guide for Communications Product Development and Approval found at [HTTP://www.epa.gov/productreview/guide/index.html](http://www.epa.gov/productreview/guide/index.html).

The Contractor is directed to conduct Conflict of Interest checks and provide this information for TOCOR review and CO approval.

IV. EPA CONTACTS

A. EPA Task Order Contracting Officer Representative (TOCOR):

Alice Yeh
290 Broadway, New York, NY 10007
Phone: 212-637-4427
yeh.alice@epa.gov

B. EPA Contract Level Contracting Officer's Representative (CL COR):

Terry Fenton
Conflict Prevention and Resolution Center (MC-2388A)
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Phone: 202-564-2090 Fax: (202) 501-1715
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C. CPRC contact for this task order

Terry Simpson

Conflict Prevention and Resolution Center (MC-2388A)

Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

Phone: (202) 564-2462 Fax: (202) 501-1715

Email: simpson.terry@epa.gov

D. EPA Contracting Officer (CO)

Erin M. Ridder

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26 West Martin Luther King Drive (Mail Code: W136A)

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V. PERIOD OF PERFORMANCE

The period of performance of this task order shall be until **March 31, 2021.**